(1874) 57 N. Y. 322; *Pattison* v. *Lawrence* (1878) 90 Ill. 174. It is therefore submitted that the public may not acquire a highway by prescription, and that the loose employment of the word means no more than user, as evidence of dedication, *State* v. *Ry.*, supra; *Post* v. *Pearsall*, supra, or as evidence of the legal establishment of the highway by statutory methods, *Commonwealth* v. *Coupe*, supra.

Bills to Remove Cloud on Title.—It seems highly probable that the early cases commonly cited as examples of the jurisdiction of equity to order the cancellation of instruments which were void at law were instances where the defense to the instrument was originally cognizable only in equity and where the admission of such defenses by the law courts was regarded as a distinct encroachment upon a field reserved for equity. When the jurisdiction of the law courts was so enlarged by judicial interpretation as to permit the defenses of fraud and illegality, which were formerly not admissible at law, 2 Poll. & Mait. 536; *Brook* v. *King* (1588). 1 Leon, 73, and to allow suits upon a lost bond, the courts of chancery refused to be ousted of a jurisdiction understood to be exclusively their own and continued to grant relief as before. *Atkinson* v. *Leonard* (1791) 3 Brown C. C. 218; *St. John* v. *St. John* (1805) 11 Ves. Jr. 526; *Jackman* v. *Mitchell* (1807) 13 Ves. Jr. 581. The present theory of the power of equity to order the cancellation of an outstanding instrument void at law, where the title to land, was involved would seem to derive its origin from a decision of Lord Eldon in *Hayward* v. *Dimsdale* (1810) 17 Ves. Jr. 111; see also *Bromley* v. *Holland* (1802) 7 Ves. Jr. 21, expressly repudiating the contrary view held in prior cases and justifying the interference of chancery on the right of a landowner to the full and unimpaired enjoyment of his property. *Ryan* v. *McNath* (1789) 3 Brown C. C. 14; *Franco* v. *Bolton* (1797) 3 Ves. Jr. 368; *Gray* v. *Mathias* (1800) 5 Ves. Jr. 286.

Modern jurisdictions while uniformly adopting this suggestion of Lord Eldon and recognizing the power of equity to remove a cloud on title, differ widely as to what constitutes such a cloud. The majority of the American courts have followed the lead of New York in holding that a bill will not lie where the instrument complained of is void on its face or because of the omission of preliminary proceedings which any one claiming under it would be required to prove. *Scott* v. *Onderdonk* (1856) 14 N. Y. 9; *Pixley* v. *Higgins* (1860) 15 Cal. 128. The outstanding instrument must of itself or in connection with extrinsic facts constitute a *prima facie* case. *Thompson* v. *Etowah Iron Co.* (1893) 91 Ga. 538. On the other hand the Supreme Court of Texas has held that notwithstanding an instrument be void on its face, the court has power which it must exercise, to cancel the same. *Day Co.* v. *The State* (1887) 68 Tex. 526. A recent case in Michigan, *Flint Land Co.* v. *Fochtman* (1905) 103 N. W. 813, followed the Texas rule and entertained a bill to remove cloud where the allegations showed an absolute title in the complainant and a complete barring of the equitable claim of the defendant. The object of the Court in thus restoring the complainant to the enjoyment of the full marketability of his land by allaying the fears of prospective vendees is certainly more in accord with the spirit of equitable relief in which the

bill was originally founded than the verbal logic of the New York rule which holds there can be no cloud to remove unless the complainant's title be threatened by a *prima facie* outstanding instrument. See 3 Pom. Equity Juris. Sec. 1399. The reasons assigned in *Scott* v. *Onderdonk*, supra, for the refusal of the court to grant relief are that the damage to the complainant is too speculative unless it can be shown that his title is jeopardized by a *prima facie* instrument, in which case he will not be compelled to hazard the loss of his evidence. While such an argument might very properly entitle a complainant to a bill to perpetuate testimony, *Angel* v. *Angel* (1822) 1 Sim. & St. 84, it really has no bearing upon an application for a removal of a cloud upon title, which was devised for an entirely different purpose—to restore to a landowner the enjoyment of the full marketability of his lands. The recognition of the principle here contended for would seem to lead logically to the view taken by the Supreme Court in relieving a landowner against a mere oral claim and of establishing by judicial determination, as a matter of record, a title resting in adverse possession although such title was not specifically controverted by the defendant nor assailed by any actions for possession. *Sharon* v. *Tucker* (1891) 144 U. S. 533.

EXCESS OF PRIVILEGE AND IMPLIED MALICE IN LIBEL.—The question as to what extent the interests of society demand that the law should extend the privilege of self protection in libel, is suggested by a recent case in Georgia. An action was brought by a discharged conductor for damages suffered by reason of a bulletin posted by defendant company in its offices, implying that the plaintiff had converted certain tickets, and requiring that the same should be refused by passenger conductors. Defendant's offices were open to the public and all employees were obliged to examine bulletins of this nature. A jugdment based on a verdict for the defendant was reversed. *Sheftall* v. *Cent. of Ga. Ry. Co.* (1905) 51 S. E. 646.

The court recognized the well settled principle that defamation in self-defence is conditionally privileged, and applied the qualifying rule that the statement must be limited to those to whom the interest to be subserved requires that the information be communicated. But the court seems to consider that excess of privilege under the circumstances should be evidence to the jury of the bad faith of the defendant. Whether or not this is material depends on the larger question of the necessity in such an action of proving malice. While it has been often held that upon the publication of defamatory words the law will presume malice, *Toogood* v. *Spyring* (1834) 1 Cromp. M. & R. 181, this is obviously fictitious. When, on such a theory of implied malice, a newspaper proprietor is held liable for the typographical error of his printer, *Shepheard* v. *Whitaker* (1875) 32 Law Times 402, the law clearly presumes what does not in fact exist.

To the roman origin of this branch of our legal system its peculiarities may be ascribed. 6 Am. Law Rev. 593, 597. To the civil jurist an intent to injure the plaintiff was a necessary element of an action for *injuria*, Justinian's Digest, Lib. XLVII, tit. x, fr. 3, §§ 3, 4, and the bona fides of the defendant was a bar to an action for slander